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the same situation in facts and in pleadings as the principal California case was presented in Mooney v. Hauck.[14] The Ohio Appellate Court came to the conclusion that the obligation to repair a glass grating placed in the sidewalk for his own use is separate from the obligation to repair the street or sidewalk. The owner's statutory duty to repair a sidewalk, which in California is dependent upon formal notice, is not to be confused with his common-law obligation to refrain from allowing defective grates[15] to exist in the sidewalk.[16]

T. H. L.

Recent Decisions

BAILMENTS: NATURE OF SEED GROWERS' CONTRACTS—Plaintiff seed company gave stock seed to defendant farmer to grow, product to be returned to plaintiff. By the contract made between the parties, title to both the stock seed and the crop was to be in the plaintiff unless the crop was rejected because of its quality. Defendant grew the seed, but sold it to a third party. Plaintiff sued in trover. *Held:* that the contract created a bailment for hire under Coggs v. Barnard (1703) 2 Ld. Raym. 909, 92 Eng. Rep. R. 107, and the plaintiff as bailor could sue for the return of the property at any time. *D. M. Ferry & Co. v. Forqueher* (Mont., 1921) 202 Pac. 193.

This case seems to reach a justified conclusion by unjustified reasoning, for under the doctrine of potential existence the plaintiff could have claimed title to the crop through a sale by the grower and maintained action in trover. The grower owned his own land, on which the seed was

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451, 453. See also article in 79 Just. P. 181, 182, discussing the dual purpose conception of Winslowe v. Busby Urban District Council (1908) 72 Just. P. 259.

[14] (1915) 1 Ohio App. 432, 35 Ohio Cir. Ct. Rep. 134, 137, affirmed without opinion Hauck v. Mooney, 92 Ohio St. 511, 112 N. E. 1084. Plaintiff caught her heel in an opening of glass grating. Plaintiff alleged negligence in permitting such a condition. Defendant insisted that duty of street repair was not upon abutting owner. Defendant claimed that plaintiff should allege that such a structure was a nuisance. Defendant was held liable. Negligently maintaining a defective covering was sufficient to make the defendant pay damages.

[15] Supra, n. 13, n. 14; Trustees of Canadaigua v. Foster (1898) 156 N. Y. 354, 50 N. E. 971. Blaechinska v. Howard Mission (1890) 56 Hun. (N. Y.) 322, 9 N. Y. Supp. 679; Shearman & Redfield on Negligence (6th ed.) par. 703.

[16] Due care in the upkeep of the structure will be required of the owner whether it be placed in the sidewalk by express or implied municipal authority. Shearman & Redfield on Negligence (6th ed.) par. 703. But whether a city ordinance specifically allowing sidewalks to be made of glass blocks would so absorb the conception of a separate structure is a proposition upon which the present writer has found no authority. If such an ordinance is so specific in its framing that the courts cannot avoid so construing it, the ordinance should be changed. As a matter of policy, it would seem that the hazards of a public thoroughfare should not be so enhanced. The abutting owner's use of the fee should yield to the pedestrian's rights to a reasonably safe sidewalk.

sold, and could therefore have sold any of his future crops, under this doctrine. But the court failed to consider the doctrine of potential existence, and turned to bailments for the plaintiff's recovery. To hold that such a contract creates a bailment is a stretching of the law to a breaking point. The court has some authority for its decision, since it quotes the three cases decided on such contracts heretofore. Of these, two are in accord with the principal case (Gilbert v. Copeland (1918) 22 Ga. App. 753, 97 S. E. 251; Stewart v. Sculthorp (1894) 25 Ont. 544), but of these the latter held the transaction a bailment without discussion, while the former seems to be the foundation of the reasoning in the principal case and is subject to the same criticism. In the third case (Robinson v. Stricklin (1905) 73 Nebr. 242, 102 N. W. 479) the court reasons its way to a contrary conclusion.

A bailment is a delivery of goods for some purpose on a contract, express or implied, that after the purpose has been fulfilled the goods shall be redelivered to the bailor or otherwise dealt with according to his instructions (In re Southern Arizona Smelting Co. (1917) 240 Fed. 47; 6 C. J. 1084). Herein lies the difficulty with the present case. The very goods delivered are destroyed by the processes of germination and plant growth. After the plant sprouts, no chattel on which the bailment can attach exists until the crop comes into being. As in a pledge, chattels not yet in existence cannot be bailed (Macomber v. Parker (1833) 14 Pick. (Mass.) 497; Smithhurst v. Edmunds (1862) 14 N. J. Eq. 408; Collins' Appeal (1883) 107 Pa. 590, 52 Am. Rep. 479). It is true that chattels may be bailed and returned in far different form, as when ores are smelted; both the slag and the metal belong to the bailee (In re Southern Arizona Smelting Co., supra); or materials added to the goods bailed attach to and become part of the bailment, as when linings are furnished, and are put in coats made by the bailee (Borman v. U. S. (1919) 262 Fed. 26). But in all such cases the article bailed never loses its existence as the seed does here. The common law on bailments does expand to meet modern conditions, but such expansion must certainly be reasonable and not forced as is here attempted.

ESCROW: NECESSITY FOR A CONTRACT BINDING BOTH PARTIES—M gave a binding option for the purchase of 1900 shares of stock and delivered the stock to a bank accompanied by written instructions to deliver it to F at any time within two years thereafter upon payment of $2000 to the bank by the option holder. Before the option lapses, M became dissatisfied and in order to avoid a sale to F induced C to purchase and secured delivery. F later elected to purchase and then sue C in conversion for the value of the stock. *Held*: that the defendant was a purchaser with notice and liable to the option holder; that since a valid escrow had been created, the escrow holder could pass no title to the stock except to the option holder, particularly when the wrongful delivery is to one who takes with notice. The option holder was therefore allowed recovery. *Feisthamel v. Campbell* (1921) 37 Cal. App. Dec. 27.

Since an option agreement is now considered a binding contract specifically enforcible if for land (Smith v. Bangham (1909) 156 Cal. 359, 104 Pac. 689, 28 L. R. A. (N. S.) 522; Bailey v. Security Trust Co. (1919) 179 Cal. 540, 147 Pac. 444; Braselton v. Vokal (1921) 35 Cal. App. Dec. 691, 200 Pac. 651) this case falls within the doctrine that a valid escrow